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IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No. 560

SILVIO A. LANZA and VITO F. LANZA,
Petitioners,

vs.

STATE OF NEW JERSEY, BY SALVATORE A. BONTEMPO, Commissioner of Conservation and Economic Development,
Appellee.

On Appeal from New Jersey Supreme Court

PETITION FOR REHEARING

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VITO F. LANZA,
On the Petition.

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Appellee.

PETITION FOR REHEARING

Silvio A. Lanza and Vito F. Lanza pray that this Court grant rehearing of its Order of January 20, 1964, dismissing their appeal for want of jurisdiction and denying certiorari (after treating the papers whereon the appeal was taken as a petition for writ of certiorari) in spite of the fact that the notice of appeal was filed as a matter of right and predicated affirmatively on specific constitutional questions presented at the trial level and determined adversely against appellants in the asserted belief in the record that they had been previously determined by this Court when, in truth and in fact, these questions are now raised in this Court for the first time (D47a-22 to 32; D51a-30 to D52a-5; D79a-13 to 29; D159a to D174a-5; D176a-22

to 40; D179a-25 to 37; D811a-15 to D821a-15; D36a to D134a; D159a to D174a; D732a to D874a; D179a-4 to D180a-35) and respectfully request in accordance with the appeal providently taken as of right that a writ of certiorari issue to review the judgment of the New Jersey Supreme Court in the above entitled case, as prayed for in the Jurisdictional Statement filed previously herein.

Passing on the motion to dismiss was accordingly premature and irregularly considered without a consideration of the record of appeal on the merits. An appellee may not in this manner direct a motion to dismiss which the rules of this Court themselves do not permit, even under the recent amendments effecting the changes. This was the very weakness the rules intended to protect.

As set forth in the Jurisdictional Statement, the appellants' lands contained an extensive plantation of nursery stock. To this stock the trial court affixed a so-called fair value of only $1,975.00. The appellant, Silvio A. Lanza, introduced credible and competent evidence that the value of his nursery stock was in excess of $250,000.00. It is evident that the award fails to give the appellants fair value for their property and further is confiscatory and constitutes a taking of their property without due process of law, in contravention of Amendment XIV to the United States Constitution. Further, the appellant, Vito F. Lanza, was denied his right to intervene in the cause, thereby depriving him of his basic Federal constitutional right that his property should not be taken or disposed of without a hearing. Moreover, there is the basic question of the termination of the condemnation power under the very statute granting that power during the pendency of the proceedings, and the retroactive construction given the statute by the New Jersey courts which impaired Silvio A. Lanza's vested right to deal with his property and deprived him and all persons interested therein of any appreciation in

the value of the property or of any increase in the value of the nursery stock subsequent to July 3, 1957.

The appellants believe that this Court may not have given due weight to the fact that this is the first time this Court has had before it all of the issues in the case, and that any prior determinations which may have been brought before this Court for review in a previous appeal by Silvio A. Lanza were not final judgments. As stated in appellants' Reply Statement, the issues concerning the expiration of the condemnation power during the pendency of the action and the effect on the appellants' rights as a result thereof, as well as the denial of Vito F. Lanza's right to intervention, and the *quantum* of the award, were never presented to this Court for review until the appeal in which this petition for rehearing is being made.

In view of this Court's acknowledged concern with the protection of basic property rights, as evidenced by the extension of its scope of review over the exercise of the condemnation power, the appellants find it hard to believe that this Court would deny them their right to review of the very substantial Federal questions which have been decided adversely to them in the courts of the State of New Jersey.

CONCLUSION

For the reasons set forth above and in the Jurisdictional Statement and appellants' Reply Statement, it is respectfully urged that rehearing be granted, and that upon such rehearing a writ of certiorari issue to the Supreme Court of the State of New Jersey.

Respectfully submitted,

JACOB GREEN,
Counsel for Petitioners.

VITO F. LANZA.
On the Petition.

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

JACOB GREEN,
Counsel for Petitioners.